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Appl. No. 10/688,539 Atty. Docket No. 32328US02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Joel S. Echols et al. :Group Art Unit: 1615
Appl. No. 10/688,539 :Examiner: Kishore, Gollamudi S.
Filed: October 17, 2003 :Confirmation No. 1150
For THREE LAYER ARTIFICIAL TEAR FORMULATION

RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. 121

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R:

This is in response to the Office Action dated August 22, 2001. Claims 1-21 remain pending in the present application.

Restriction has been required between: (I) claims 1-7, drawn to a composition for ophthalmic use; (II) claims 8-14, drawn to an artificial tear film; (III) claims 15-18, drawn to a method of formulating a composition for ophthalmic use; and (IV) claims 19-21, drawn to methods of treating dry eye syndrome, rewetting contact lens, and delivering pharmacologic agents. This restriction requirement is respectfully traversed.

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8 (a))

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Date: May 23, 2007 Leanne Lentz Spencer

With respect to Inventions I and III, the Examiner states that the composition can be formed by mixing the hydrophilic polymer, polyvinyl alcohol and polyvinyl acetate and phospholipid together in water. However, there is no indication how this proposed method of forming the composition would be materially different from the method claimed in claims 15-18.

The Examiner has not provided any rationale as to why Invention II is distinct from Invention III or why Invention III is distinct from Invention IV. Furthermore, it is noted that Inventions II and IV have nearly identical classifications. Regarding Inventions I and II, the Examiner contends that these inventions are independent. Applicant respectfully submits that Inventions I and II are not independent; they are related inventions because they are both related to substances used with the eye: Invention I being drawn to a composition for ophthalmic use and Invention II being drawn to an artificial tear film over the surface of an eye.

For these reasons, reconsideration and withdrawal of the restriction requirement is respectfully requested.

Applicant provisionally elects Invention I, claims 1-7 for further prosecution. The remaining claims will be retained pending resolution of the traversal.

Furthermore, election under 35 U.S.C. 121 of a single disclosed species has been required as between the species of treating dry eye syndrome and rewetting contact lens. The Examiner states that no claim is generic and indicates that claims 19 and 21 read on the species of treating dry eye syndrome and claim 20 reads on the species of rewetting contact lens.

None of elected claims 1-7 appears to be affected by this election requirement. Nevertheless, applicant provisionally elects with traverse the species of treating dry eye syndrome. Claims 19 and 21 read on this elected species.

An action on the merits is awaited.

Respectfully submitted,

5/23/07
Date

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